

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

CHRISTOPHER D. JOHNSON,

Plaintiff,

v.

Warden CYNTHIA NELSON, *et al.*,

Defendants.

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1:06-CV-145 (WLS)

ORDER

Before the Court is a Recommendation from United States Magistrate Richard L. Hodge filed on December 10, 2008. (Doc. 46). It is recommended that Defendants' Motion for Summary Judgment (Doc. 40) be granted. (Doc. 46). Plaintiff filed an untimely objection to the Report and Recommendation on January 28, 2009. (Doc. 48).

In the Recommendation, it was found that Plaintiff essentially conceded that he likely did receive proper medical care. Additionally, it was found that Plaintiff failed to provide evidence to show Defendants knew or should have known that Inmate Smith had mental health issues. At best Plaintiff cited the fact that he filed the instant action as evidence that Defendants should have known about Smith's issues. Judge Hodge also noted that, as of the date of the Report and Recommendation, Plaintiff had not put forth a "shred" of evidence to support his claims. Finally, Plaintiff provided no response to Defendants' Motion for Summary Judge.

In his objection, Plaintiff complains of Defendants' failure to comply with his discovery requests and argues that discovery would have revealed the evidence necessary to establish a genuine issue as to material facts. These issues either were or could have been presented to the Magistrate Judge. These matters are not properly before the Court at this time and are of no avail to Plaintiff at this stage.

Since Plaintiff failed to offer any evidence or argument in response to Defendants' Motion for Summary Judgment¹, it would be inappropriate for the Court to consider the arguments included

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The Court notes here that the necessary *pro se* notice ordering Plaintiff to respond to Defendant's motion and notifying Plaintiff of the negative affects of any failure to do so was sent on April 18, 2008. (Doc. 43).

in Plaintiff's Objection, as the same surely were not presented to and considered by Judge Hodge. *See Williams v. McNeil*, —F.3d —, 2009 WL 311298, *4 (11th Cir. 2009) (holding that a district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge)

Therefore, upon full review and consideration upon the record, the Court finds that said Report and Recommendation (Doc. 46) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made, reasons stated and conclusions reached herein. Accordingly, Defendant's Motion for Summary Judgment (Doc. 40) is **GRANTED**.

SO ORDERED, this 31st day of March, 2009.

/s/W. Louis Sands
THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT